



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council

Robert Oldakowski, *Mayor*
Jorge E. Mencia, *Vice Mayor*
Martha Fdez-León Broucek
Carol Diaz-Castro
Mortimer Fried
James L. Peters
Robert L. Vernon

DT: March 18, 2004

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Amendment 17 to Our Agreement with James A. Cummings

RECOMMENDATION

It is recommended that the Council approve the attached Resolution which amends our Agreement with James A. Cummings, Inc. The resolution includes one (1) amendment to our Agreement which provides additional funding for the Civic Center Project.

EXPLANATION

Amendment 17: This amendment requests an increase in funding \$118,064 for unforeseen conditions and owner changes at the Village Community Center as reflected in the following request for Change Orders; #R-11C, #R-14C, #R-16C, #R-20C, and the following items; Builder Risk Insurance, and Owner change order #3 from the department of management services (date 12-9-03). The amount requested was reviewed and previously presented to Council by the Project Construction Consultant, Skyline Management Group and is included in the overall Civic Center revised budget projection submitted to Council on October 28, 2003.

SKYLINE MANAGEMENT GROUP INC.

4040 N.E. 2nd AVENUE, SUITE NO. 305, MIAMI, FL. 33137

Tel. (305) 365-8948

Fax (305) 365-5556

- AMENDMENT #17

COMMENTS

a) \$ 11,221.⁰⁰

b) 9,394.⁰⁰

c) 6,422.⁰⁰

d) 6,234.⁰⁰

\$ 33,271.⁰⁰

- ADDITIONAL TO 10.21.03
BUDGET RECAP

e) 84,793.⁰⁰

- INCLUDED IN 10.21.03
BUDGET RECAP LINE 24

TOTAL \$ 118,064.⁰⁰

- PREVIOUS AMENDMENT SUMMARY

	<u>BUDGET</u>	<u>ACTUAL</u>	<u>DIFF.</u>
AMENDMENT #15	\$320,018	\$286,867	(\$33,151)
AMENDMENT #16	395,483	355,318	(\$40,165)

TOTAL - UNDER BUDGET

(\$73,316)

TOTAL - OVER BUDGET AMEND #17

\$ 33,271

CUMULATIVE - UNDER BUDGET

(\$ 40,045)

RESOLUTION NO. 2004-

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CONCERNING THE VILLAGE OF KEY BISCAYNE CIVIC CENTER PROJECT; AUTHORIZING CONSTRUCTION EXPENSE ITEMS DESCRIBED HEREIN; AUTHORIZING AMENDMENT NO. 17 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER CONCERNING MATTERS DESCRIBED THEREIN; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to Section 3.07(b) of the Village Charter, the Village Council desires to authorize the expenditure of Village funds for additional construction items for the Village's Civic Center Project (the "Project") as described in the Village Manager's Memorandum, marked as Exhibit "A" and attached hereto; and

WHEREAS, it is necessary to amend the Agreement between the Village and Construction Manager to implement expenditures for the work authorized herein; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to proceed as indicated in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Work Authorized, Specification Of Funds.

- A. That the construction activities for the matters described in Amendment No. 17 and in Exhibit "A", attached hereto, are each hereby approved and authorized.
- B. That the fund amount and source for the work items are hereby authorized and

approved as described in Exhibit "A."

Section 3. Amendment To Agreement Approved. That Amendment No. 17 to the Agreement between Village and Construction Manager, in substantially the form attached hereto, is hereby approved and the Village Manager and Village Clerk are hereby authorized, in their respective capacities, to execute the Amendment to Agreement on behalf of the Village, once approved as to legal form and sufficiency by the Village Attorney.

Section 4. Implementation. That the Village Manager is hereby authorized to take any and all action necessary to implement the purposes of this resolution and the Amendment to Agreement.

Section 5. Effective Date. That this resolution shall become effective upon its adoption.

PASSED AND ADOPTED this ____ day of April, 2004.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**AMENDMENT TO AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

PROJECT NO.: VKB-98069000

PROJECT NAME Village Community Center (Recreation Center)
AND LOCATION: Village Fire Station, Police Station, and
Administrative Office of the Village of
Key Biscayne, Florida (the "Project")

AMENDMENT NUMBER #17 (Unforeseen Conditions and Owner Modifications at
the Village Community Center.)

THIS AMENDMENT made this 17th Day of February in the year Two Thousand and Four

By and between the Village of Key Biscayne, Florida, a Florida municipality, (the "Owner") and

James A. Cummings, Inc.
a Florida Corporation
3575 Northwest 53rd Street
Ft. Lauderdale, FL 33309
Phone: (954) 733-4211, Fax (954) 485-9688, Federal Tax I.D. Number: 59-2098732,

(the "Construction Manager").

WHEREAS, the Owner (as a direct signatory and through its former agent, the Department of Management Services of the State of Florida (the "DMS")) has previously entered into the Agreement between the Owner and Construction Manager; and

WHEREAS, the Agreement has previously been revised by Amendment Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16;

WHEREAS, it is now necessary to revise the Agreement to: include Work Associated with Unforeseen Conditions and Owner Modifications at the Village Community Center; include Owner Change Order No. 3 for the Village Fire Station, Police and Administration and Community Center Buildings.

NOW, THEREFORE, in recognition of the good and valuable consideration provided by the covenants hereof between the parties, the Owner and the Construction Manager hereby covenant and agree to amend the Agreement to include; Work for Unforeseen Conditions and Owner Modifications at the Village Community Center; include Owner Change Order No. 3 for the Village Fire Station, Police and Administration and Community Center Buildings; and to identify its funding source; to identify the drawings, specifications and other documents upon which the GMP is based; and to otherwise revise the Agreement, as follows:

- (1) **Guaranteed Maximum Price** – the Guaranteed Maximum Price (GMP) for construction of Project VKB-98069000, Village Community Center, Village Fire Station, Village Police Station, and Administrative Office of the Village, as defined in Article 7.1 of said Agreement shall be:

\$22,941,342.59 (which includes the \$118,064.00 GMP for the Work Associated with Unforeseen Conditions and Owner Modifications at the Village Fire Station, Police and Administration and Community Center Buildings as listed below in items 2.a through 2.e for the Village Community Center.)

- (2) **Drawings and Other Supporting Documents** – in addition to the drawings, specifications and other supporting documents identified in previous amendments (No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16) to the Agreement, the Guaranteed Maximum Price (GMP) for construction of the Project, is based upon the following drawings and other supporting documents:

- a. Proposal #R-11C to the Village of Key Biscayne from James A. Cummings, Inc., dated July 17, 2003, in the amount of \$11,221.00 and in accordance with Proposal Approval by the Village of Key Biscayne dated July 24, 2003, which are attached hereto as Exhibit "A.1."
- b. Proposal #R-14C to the Village of Key Biscayne from James A. Cummings, Inc., dated October 29, 2003, in the amount of \$9,394.00 and in accordance with Robert G. Currie Partnership response to RFI #C094 dated October 23, 2003, which are attached hereto as Exhibit "A.2."
- c. Proposal #R-16C to the Village of Key Biscayne from James A. Cummings, Inc., dated October 2, 2003, in the amount of \$6,422.00 and in accordance with Proposal Approval by the Village of Key Biscayne, which are attached hereto as Exhibit "A.3."
- d. Proposal #R-20C to the Village of Key Biscayne from James A. Cummings, Inc., dated December 9, 2003, in the amount of \$6,234.00 indicating Construction Schedule Impacts and a Revised Final Completion Date of October 12, 2004 for the Community Center (Amendment No. 5) portion of the Village of Key Biscayne Civic Center Project, which are attached hereto as Exhibit "A.4."
- e. James A. Cummings, Inc. correspondence to the Village of Key Biscayne, dated February 5, 2004, in the amount of \$84,793.00 and in accordance with direction to proceed by the Village of Key Biscayne dated February 17, 2004, which are attached hereto as Exhibit "A.5."
- f. Owner Change Order No. 3 from the Department of Management Services dated December 9, 2003, in the amount of \$34,363.00 which are attached hereto as Exhibit "A.6"
- g. The revised Project Budget, which is attached hereto as Exhibit "B."

- (3) **Changes in Agreement** – various changes are required to the exhibits and articles of the Agreement to reflect the amendments described herein. It is agreed that the articles and exhibits of the Agreement shall be deemed to be amended, to provide the following:
- a. Establishment of the GMP for Work Associated with Unforeseen Conditions and Owner Modifications at the Village Fire Station, Police and Administration and Community Center Buildings in the amount of \$118,064.00; and establishment of the GMP for the Project of \$22,941,342.59.
- (4) **Effect On Agreement** - except as provided above, the articles and exhibits of the Agreement which are not affected by the amendments provided for herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

JAMES A. CUMMINGS, INC.

Attest:

By: Pamela Kalis
Corporate Secretary

By: William R. Derrer
William R. Derrer, Corporate President
James A. Cummings, Inc.

Witnessed:

By: Lisa Abbaticchio
Lisa ABBATICCHIO
(print name)

(Corporate Seal)

By: Nancy Blake
NANCY BLAKE
(print name)

VILLAGE OF KEY BISCAIYNE

Attest:

By: _____
Village Clerk

By: _____
Village Manager

Approved as to form and legal sufficiency:

By: _____
Village Attorney

EXHIBIT B**OWNER'S CONSTRUCTION BUDGET**

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE	\$113,190.00
SUBTOTAL OWNER'S TOTAL PRECONSTRUCTION PHASE FEE	<u>\$113,190.00</u>
<u>VILLAGE FIRE RESCUE DEPARTMENT & ADMINISTRATION AND POLICE FACILITY</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE	\$527,392.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT	\$457,223.00
CONSTRUCTION BUDGET BALANCE	\$10,277,461.00
SUBTOTAL CONSTRUCTION COSTS	<u>\$11,262,076.00</u>
ANTICIPATED OWNER SALES TAX SAVINGS	(\$159,266.00)
SUBTOTAL	<u>\$11,102,810.00</u>
OWNER'S CONTINGENCY	\$256,924.00
OWNER'S GMP BUDGET - FIRE RESCUE & ADMINISTRATION/POLICE	<u>\$11,359,734.00</u>
OWNER'S CONSTRUCTION BUDGET - FIRE RESCUE & ADMINISTRATION/POLICE WITH PRECONSTRUCTION FEE	<u>\$11,472,924.00</u>
<u>VILLAGE CIVIC CENTER SITE & SITE INFRASTRUCTURE WORK ELECTRICAL DUCT BANK & WATER MAIN</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE	\$119,226.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT	\$34,521.00
CONSTRUCTION BUDGET BALANCE	\$647,913.00
OWNER'S CONSTRUCTION BUDGET - VILLAGE CIVIC CENTER SITE & SITE INFRASTRUCTURE WORK ELECTRICAL DUCT BANK AND WATER MAIN	<u>\$801,660.00</u>
<u>VILLAGE CIVIC CENTER SITE & SITE INFRASTRUCTURE WORK PHASES 1, 2, 3, 4, 5 & 6 (INCLUDING SCHOOL "FF" SANITARY FORCE MAIN)</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE	\$62,630.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT	\$84,541.00
CONSTRUCTION BUDGET BALANCE	\$1,946,594.00
OWNER'S CONSTRUCTION BUDGET - VILLAGE CIVIC CENTER SITE INFRASTRUCTURE WORK	<u>\$2,093,765.00</u>
<u>VILLAGE COMMUNITY CENTER (RECREATION CENTER)</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE	\$771,920.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT	\$428,698.00
AMENDMENT NO. 16 - PERMIT DRAWING CHANGES	\$355,318.00
AMENDMENT NO. 17 - UNFORESEEN CONDITION & OWNER MODIFICATIONS	\$118,064.00
CONSTRUCTION BUDGET BALANCE	<u>\$9,123,832.00</u>

EXHIBIT B

OWNER'S CONSTRUCTION BUDGET

OWNER'S CONSTRUCTION BUDGET - VILLAGE COMMUNITY CENTER	<u>\$10,797,832.00</u>
<u>OWNER CHANGE ORDERS</u>	
OWNER CHANGE ORDER NO. 1	(\$1,140,899.62)
OWNER CHANGE ORDER NO. 2	(\$1,118,301.79)
OWNER CHANGE ORDER NO. 3	\$34,363.00
TOTAL OWNER CHANGE ORDERS	<u>(\$2,224,838.41)</u>
OWNER'S TOTAL CONSTRUCTION BUDGET (ALL PHASES)	<u>\$22,941,342.59</u>
AMENDMENT NO. 07 - VILLAGE HALL GENERATOR BUILDING (NOT INCLUDED IN GMP)	\$72,760.00
OWNER'S TOTAL CONTRACT BUDGET	<u>\$23,014,102.59</u>

D. Should any provision(s), paragraph(s), sentence(s), word(s) or phrase(s) contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida or the CITY, such provision(s), paragraph(s), sentence(s), word(s) or phrase(s) shall be deemed modified to the extent necessary in order to conform with such laws or, if not modifiable to conform with such laws, then same shall be deemed severable and, in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

SECTION XIV

OWNERSHIP OF DOCUMENTS.

VILLAGE agrees that all documents maintained and generated pursuant to this contractual relationship between CITY and VILLAGE shall be subject to all provisions of the Public Records Law, Chapter 119, Florida Statutes.

It is further understood by and between the parties that any information, writings, maps, contact documents, reports or any other matter whatsoever which is given by CITY to VILLAGE pursuant to this Agreement shall at all times remain the property of the CITY and shall not be used by the VILLAGE for any other purposes whatsoever without the written consent of the CITY.

SECTION XV

NONDELEGABILITY.

SECTION XIX

INDEPENDENT CONTRACTOR

CITY and its employees and agents shall be deemed to be independent contractors, and not agents or employees of VILLAGE, and shall not attain any rights or benefits under the Civil Service or Pension Ordinance of VILLAGE, or any rights generally afforded classified or unclassified employees; further CITY employees shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the VILLAGE.

SECTION XX

NONDISCRIMINATION.

VILLAGE agrees that it shall not discriminate as to race, sex, color, creed, national origin or handicap in connection with its performance under this Agreement.

Furthermore, that no otherwise qualified individual shall, solely by reason of his/her race, sex, color, creed, national origin, or handicap, be excluded from participating in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

SECTION XXI

CONTINGENCY CLAUSE.

Funding for this Agreement is contingent upon the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack

the day and year first herein above written.

Village of Key Biscayne
a municipal Corporation
of the State of Florida

City of Miami, a municipal
Corporation of the State
of Florida

Jacqueline R. Menendez
Village Manager
Village of Key Biscayne

Joe Arriola
City Manager
City of Miami

ATTEST:


ATTEST:

Village Clerk

City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Village Attorney
Village of Key Biscayne

Alejandro Vilarello
City Attorney
City of Miami

APPROVED AS TO INSURANCE
REQUIREMENTS:

Risk Management Department

3. \$785 per hour per Advanced Life Support Rescue Company
4. \$1,035 per hour per Haz Mat Truck
5. \$1,035 per hour per Foam Pumper Truck
6. \$262 per hour per person for Special Equipment (Fire Boat, District Chief, Safety Officer, etc.)
7. \$393 per hour per Air Truck

The charges as set forth above shall be the hourly rates for equipment and personnel with the time for such charges to be calculated from the time of the alarm to the time the MIAMI FIRE-RESCUE DEPARTMENT responding units return to City service. The hourly charges shall be prorated for fractional parts of an hour with minutes being the smallest increments. Such charges are based upon at least four (4) CITY FIREFIGHTERS operating each piece of apparatus listed in items 1, 2, 4, and 5 above, and three (3) CITY FIREFIGHTERS operating equipment listed in item 3. In the event fewer CITY FIREFIGHTERS are provided, the charge will be reduced proportionately.

For the purposes of this Agreement, a "Major Emergency" is defined as those incidents that involve automatic aid multi-company dispatches and extend longer than one (1) hour in duration. These incidents are considered out of control. Not considered Major Emergencies are minor fires, rescue runs, small hazardous materials incidents and those incidents that have been routinely handled in the past elsewhere in the CITY and the VILLAGE by its Fire Department, by routine custom and practice.

VILLAGE equipment, material and personnel, would be for a maximum of twelve (12) months. Price will be determined should the actual need arise.

APPENDIX III

MAJOR EMERGENCY COMMAND STRUCTURE

When an emergency incident occurs within the Village of Key Biscayne involving Miami Fire-Rescue Department units, the Command structure listed below will be followed:

A. Officers of Equal Rank: When officers on the incident from the Village of Key Biscayne Fire Rescue Department and Miami Fire-Rescue Department are of equal ranks, the Officer from the Village of Key Biscayne Fire Rescue Department is in charge of the incident.

B. Officers of Unequal Rank: When Officers on an incident from the Village of Key Biscayne Fire Rescue Department and Miami Fire-Rescue Department are of unequal ranks, the highest ranking Officer will be in charge of the incident.

C. District Chiefs: Miami Fire-Rescue Department District Chiefs on arrival, will be in Command of all incidents at the Village of Key Biscayne requiring their dispatch. This Command structure will be followed whether the units involved in the incident are solely Miami Fire-Rescue Department or a combination of Miami Fire-Rescue Department and Village of Key Biscayne Fire Rescue Department. The only exceptions to this are:

1. The District Chief is relieved of Command by a Miami Officer of higher rank.
2. The District Chief is relieved by the Chief or the Deputy Chief of the Village of Key Biscayne Fire